

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

VS.

CR. NO. 15-4268 JB

ANGEL DELEON, et al.,

Defendants.

Transcript of excerpts of testimony of

BRYAN ACEE

May 14, 2018

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1 THE COURT: Thank you, Mr. Jaramillo.
2 Thank you for your testimony.

3 All right. Are we ready for Mr. Acee to
4 return to the witness box, Mr. Castellano?

5 MR. CASTELLANO: Yes, Your Honor. The
6 United States re-calls Special Agent Bryan Acee.

7 THE COURT: All right. Mr. Acee, I'll just
8 remind you that you're still under oath.

9 Mr. Castellano, if you wish to continue
10 your direct examination of Mr. Acee, you may do so at
11 this time.

12 BRYAN ACEE,
13 after having been first duly sworn under oath,
14 was questioned and testified as follows:

15 DIRECT EXAMINATION (Continued)

16 BY MR. CASTELLANO:

17 Q. I want to cover some topics that have been
18 discussed since you first testified in this case.
19 One of them is the payments to Leroy Lucero. The
20 jury has heard that he received, I think, somewhere
21 in the area of \$7,000. Have you paid Leroy Lucero?

22 A. No.

23 Q. What's your understanding of where the
24 payments previously came from?

25 A. I just learned that they came from Agent

1 Roundy, Lance Roundy.

2 Q. And were you aware in this investigation
3 that Agent Roundy previously had discussions with Mr.
4 Lucero?

5 A. Yes, and he had him open as an informant
6 for a while.

7 Q. Regarding some of the threats and things of
8 that nature in this case, are you aware of the Javier
9 Molina murder, which has been touched on in this
10 case?

11 A. Yes.

12 Q. What year was he killed?

13 A. 2014.

14 Q. Through this investigation, are you aware
15 what year it was that he cooperated with law
16 enforcement?

17 A. I believe it was 2008.

18 Q. So was that then the time period from when
19 he gave the statement to law enforcement to the time
20 he was killed?

21 A. Yes.

22 Q. Approximately six years?

23 A. That's correct.

24 Q. What about the outstanding order or green
25 light on Julian Romero? Do you recall approximately

1 how long that was outstanding?

2 MR. CASTLE: Objection, Your Honor,
3 hearsay.

4 THE COURT: Overruled.

5 A. About 15 years.

6 Q. Mario Rodriguez, also known as Blue, was
7 asked about his SNM membership, and when he basically
8 came clean about being an SNM member. Do you recall
9 that?

10 A. I do.

11 Q. What do you recall about those interactions
12 with Mario Rodriguez and discussions about his SNM
13 membership?

14 A. He would joke with me that I couldn't prove
15 he was SNM. And I would make comments back. One
16 specifically, he wanted to work with Corrections to
17 help teach gang classes. And I said, "How are you
18 going to teach" --

19 MR. SINDEL: Your Honor, this is all
20 hearsay. I don't think that it has anything to do
21 with this particular case. It's irrelevant.

22 THE COURT: I think he's beginning to drift
23 into hearsay, so I'll sustain the objection.

24 Q. Okay. Do you recall that line of
25 questioning where the defense attorneys asked him

1 about denying that he was SNM?

2 A. Yes.

3 Q. And did you ever really believe that?

4 A. No.

5 Q. And did he truly come clean at some point
6 about his membership?

7 A. Yes.

8 Q. There was discussion of both Jose Gomez and
9 Julian Romero in this case having been charged, and
10 then charges dropped. Do you remember that?

11 A. Yes, sir.

12 Q. And what was the status of those two people
13 in relation to this case?

14 A. They were both victims.

15 Q. So at some point, was there a decision made
16 about the course to take with those two specific
17 individuals?

18 A. Yes, sir.

19 Q. What was that?

20 A. To dismiss the charges against them.

21 Q. And when you charged them, what other
22 additional information did you have other than just
23 the words they told you about their conduct?

24 A. That's all I had was what they told -- the
25 criminal activity that they told me about so I wrote

1 a complaint based on that.

2 Q. Willie Romero was also asked about a gun
3 and some money found in his home. Do you remember
4 that?

5 A. I do.

6 Q. And were you part of the team that executed
7 a warrant at his house?

8 A. I wrote the search warrant. I wasn't
9 there. I was in a command post, because we had -- I
10 had written one search warrant that included 12
11 different locations, so I was in a central command
12 post. But I'm familiar with it.

13 Q. What do you recall about the gun and the
14 money?

15 A. Well, we seized -- the agents there seized
16 a firearm pursuant to the search warrant and
17 currency. I later returned the currency and the
18 firearm to Mr. Romero.

19 Q. When did you do that?

20 A. He provided it --

21 MR. SINDEL: Objection, Your Honor. He
22 provided something, I certainly would like to see it.
23 Otherwise it's hearsay.

24 THE COURT: Well, the question that's on
25 the table is when Mr. Acee did something; correct?

1 MR. CASTELLANO: That's correct, Your
2 Honor.

3 THE COURT: So I think he can answer that
4 question.

5 MR. SINDEL: But he asked him basically why
6 he did it.

7 THE COURT: No, he asked when, I think is
8 the question, isn't it?

9 MR. CASTELLANO: And I do want to ask him
10 why.

11 THE COURT: That may be coming up. The
12 question on the table is when, right?

13 MR. CASTELLANO: Now, I'm going right to
14 the why.

15 MR. SINDEL: If the question is when, I
16 don't have a problem. If the question is why, I'll
17 be on my feet.

18 THE COURT: Which is it, Mr. Castellano?

19 MR. CASTELLANO: I'll start with the when,
20 and I'll move to the why.

21 THE COURT: Let's start with the when.

22 MR. SINDEL: When there is a when, there is
23 a why.

24 THE COURT: I understand.

25 MR. CASTELLANO: There will be in this

1 case.

2 THE COURT: I'll take them one at a time.

3 Q. Approximately how long after those items
4 were seized were they returned to Mr. Romero?

5 A. Within a few weeks.

6 Q. Tell us about the gun.

7 A. Well, it was an antique and didn't meet the
8 definition of a firearm. The agents that seized it
9 didn't know that.

10 Q. Tell us about the money.

11 A. He had receipts for it.

12 MR. SINDEL: Objection, Your Honor. I'd
13 like to see those receipts. It's hearsay and ask it
14 be stricken.

15 THE COURT: Overruled.

16 Q. The name Daniel Orndorff, or Sleepy, has
17 come up a few times in this trial. What's the
18 current status of Mr. Orndorff?

19 A. He's a fugitive for parole violations from
20 the State of New Mexico and he also has local
21 warrants for running from the police when they tried
22 to apprehend him.

23 Q. And what attempts have you or the FBI made
24 to subpoena him to get him to court?

25 A. We've attempted to serve a subpoena at his

1 residence. Then I asked the U.S. Marshal's Fugitive
2 Task Force to hunt him down on his arrest warrants,
3 and took that case and they made attempts.

4 Q. When we got to threats in this case, are
5 you aware of threats to somebody named Jerry Armenta?

6 A. Yes.

7 Q. How did those threats come about?

8 A. Anthony Ray Baca, Pup, asked one of my
9 informants, Mario Montoya, to visit Armenta's
10 family's house in Albuquerque, and let them know that
11 he should not testify.

12 Q. And was Jerry Armenta a witness against
13 other SNM Gang members?

14 A. Yes.

15 Q. There has been testimony in this case about
16 a bag that was found over Adrian Burns' head. Do you
17 remember what kind of bag that was, from looking at
18 the evidence?

19 A. Yes.

20 Q. What kind of bag was it?

21 A. It was an Allsup's plastic bag.

22 Q. There are also questions in this case about
23 Jake Armijo and an allegation of an overt act
24 regarding a murder. Do you recall that?

25 A. Yes.

1 Q. What happened to that overt act in the
2 indictment?

3 A. We dropped it in the superseding
4 indictment.

5 Q. Why is that?

6 A. I found evidence indicating that I didn't
7 think that was -- that that overt act had occurred.
8 And so I let your office know. And the next time we
9 presented at the Grand Jury, we did not include that
10 overt act.

11 Q. And so did that change based on a change in
12 the proof or the evidence against him regarding that
13 murder?

14 A. Yes.

15 Q. Do you recall executing a warrant at Joe
16 and Andrew Gallegos' trailer in, I think, April 2016?

17 A. Yes.

18 Q. Did you find some evidence in there that
19 was SNM-related during that timeframe?

20 MR. SINDEL: Your Honor, I'm going to renew
21 earlier objections.

22 MS. TORRACO: Can I approach on that as
23 well?

24 THE COURT: Okay.

25 (The following proceedings were held at the

1 bench.)

2 THE COURT: What is your objection?

3 MR. SINDEL: My objection is basically the
4 same as the motion to suppress. It's just a
5 continuing objection for the record. That's all.

6 THE COURT: Yours?

7 MS. TORRACO: My objection is it's hearsay.
8 He's entering this for the statement that is being
9 made on that box. We don't know who made the
10 statement. I don't know how it's relevant to Andrew
11 Gallegos. Because this is in 2016, that Mr. Gallegos
12 is accused of a murder in 2012.

13 THE COURT: Do you have anything to link
14 this up with one of the Gallegos brothers?

15 MR. CASTELLANO: This was found in Joe
16 Gallegos' bedroom. So to the extent Exhibits 997 and
17 998 show a box, each exhibit shows one side of the
18 box. The other exhibits show the inside of the box,
19 and that's where the SNM logo comes from.

20 THE COURT: I guess I would think that's
21 enough circumstantial evidence to establish that
22 those are Mr. Joe Gallegos'.

23 MR. CASTELLANO: Yes, sir.

24 THE COURT: Sustained. And so I will allow
25 it to come in. If there is something to disprove

1 that, the jury can make that determination. It seems
2 enough for it to come in.

3 MR. SINDEL: Okay.

4 THE COURT: Those have not been admitted
5 yet?

6 MR. CASTELLANO: No, they have not.

7 (The following proceedings were held in
8 open court.)

9 THE COURT: Mr. Castellano.

10 MR. CASTELLANO: May I approach the
11 witness?

12 THE COURT: You may.

13 Q. Agent Acee, let me show you what have been
14 marked as Exhibits 996, 997, 994, and 995. I'll ask
15 you if you can recognize each of those exhibits?

16 A. Yes, sir.

17 Q. How do you recognize them?

18 A. These are items from the search at 04 Erin
19 Court in 2016.

20 Q. Are they a fair and accurate depiction of
21 what you saw on that occasion?

22 A. Yes, sir.

23 Q. At this time, we move the admission of 994,
24 995, 996, and 997?

25 THE COURT: Any objection to these coming

1 in? Not hearing any, Exhibits 996, 997, 994, and 995
2 will be admitted into evidence.

3 (Exhibits 994, 995, 996, and 997 admitted.)

4 MR. CASTELLANO: May I publish to the jury,
5 Your Honor?

6 THE COURT: You may.

7 Q. Agent Acee, beginning with Exhibit 996, let
8 me circle something. What are we looking at?

9 A. We're looking at a metal storage box.

10 Q. Where was this box found?

11 A. In Joe Gallegos' bedroom.

12 Q. I'm going to circle something smaller on
13 the box. Do you see what I've circled there?

14 A. I do.

15 Q. What is that?

16 A. It's the SNM symbol inside the Zia.

17 Q. I'm circling something else here to the
18 right of that other item.

19 A. Roman numeral 12.

20 Q. Let me show you the next, Exhibit 997.
21 What is this that we're looking at on this exhibit?

22 A. It's the other side of that box.

23 Q. Do you see any names on the box?

24 A. Yes.

25 Q. What names do you see?

1 A. Starting on the left side of the box, I see
2 "Little Smiley," and then "Shellz" to the right of
3 that. Below that to the left it says, "Duke." I can
4 describe the other writing on there. I don't think
5 they're names.

6 Q. If can you read upside down, what is this
7 that I've circled on the box?

8 A. It says, "Family is first no matter what."

9 Q. Let me turn your attention next to Exhibit
10 994. The same question. In what room of the house
11 is this, or whose room is it?

12 A. Joe Gallegos' bedroom.

13 Q. I'm now circling something in the center
14 right of that photograph. What have I circled?

15 A. What you've circled is a picture, a drawing
16 of the Zia symbol with the letters SNM inside it.

17 Q. Let me show you Exhibit 995.

18 A. This is just a different angle of the same
19 box with the drawing inside.

20 Q. Now, is this the inside of the box we saw
21 earlier they had kind of a silver outside?

22 A. Yes.

23 Q. And I'm kind of circling some documents in
24 this photograph. Were these documents contained
25 inside that box?

1 A. Yes, some were. Some were just on the bed.

2 Q. Now, earlier in this trial when it made
3 less sense there was a discussion of Phases 1, 2, and
4 3 of your investigation. Do you remember that?

5 A. Yes.

6 Q. What was Phase 3 focused on?

7 A. Addressing threats to cooperators and
8 witnesses.

9 Q. And do you recall approximately when the
10 tablets came out that had the discovery on them?

11 A. I believe they came out in August of 2016.

12 Q. What were you doing at the beginning of
13 September 2016, after the tablets came out?

14 A. Well, I was still investigating the case.
15 And then I started addressing some of the threats
16 that we were hearing about and learning of.

17 Q. And as part of addressing those threats,
18 what type of document did you prepare to try to
19 address some of the threats?

20 A. I prepared a rather lengthy search warrant
21 affidavit that -- in which I requested to search 12
22 locations pursuant to a search warrant.

23 Q. And in the search warrant did you document
24 any threats to Gerald Archuleta?

25 A. Yes.

1 Q. Let me show you Exhibit 693. Now, Gerald
2 Archuleta was arrested in Tennessee on December 2nd
3 of 2015. Can you tell the members of the jury why he
4 was processed with other members on April 28 of 2016?

5 A. Took him a little while to get back to New
6 Mexico. And once he got here, he agreed to
7 cooperate, so I sent him into the prison with a
8 recording device. Other members of the gang didn't
9 know he was cooperating. So when we did the Phase 2
10 takedown, we put him in with that group to come down
11 and be processed, photographed, fingerprinted, have
12 his tattoos searched.

13 Q. And did that explain why he was not in the
14 December 3rd group of photographs?

15 A. Yes.

16 Q. And then, with that warrant, were you
17 trying to address the threats to him?

18 A. Yes.

19 Q. You mentioned searching 12 locations. Did
20 one of those locations involve a prison in Beaumont,
21 Texas?

22 A. Well, to be clear, my search warrant was
23 for 12 locations, but we did a total of 18 searches,
24 one of which was a prison cell in Beaumont, Texas.

25 Q. Whose cell was this?

1 A. Frankie Gallegos.

2 MR. SINDEL: Your Honor, may we approach?

3 THE COURT: You may.

4 (The following proceedings were held at the
5 bench.)

6 MR. SINDEL: The prosecution has shown me
7 four photographs which I'm assuming will elicit
8 testimony that these were taken from the Beaumont,
9 Texas cell of Frankie Gallegos. You know, we
10 objected from the very beginning in putting him in
11 this case, but the Court has ruled. And there have
12 had been a number of things that -- they testified
13 that he's an SNM member, but it seems to me they've
14 got photographs of a phone book that he has, his
15 personal phone book. They've got photographs of him
16 with his family, and looks like Andrew. And they've
17 got a photograph of him in the yard, I guess, at the
18 institution. I don't know that any of those other
19 people are identified or what the identifications are
20 of those individuals. And the fourth one was his
21 tattoos. No one has really suggested he's not a
22 member of the SNM. There hasn't been any
23 cross-examination. It seems Frankie, because he's
24 got the same last name and for sure the same mother,
25 then all of a sudden he's appropriate and relevant to

1 whether or not Joe Gallegos has committed the crimes
2 he's charged with. And you'll notice that we haven't
3 really aggressively in any way challenged the fact
4 that there has been numerous testimony that he's an
5 SNM member. Joe Gallegos --

6 MS. TORRACO: At some point it's a 403.

7 THE COURT: But the problem is Andrew is
8 contesting it.

9 MS. TORRACO: Contesting what?

10 THE COURT: That Andrew is an SNM Gang
11 member.

12 MS. TORRACO: We are. Here's the thing the
13 thing on Frankie: I think it's pretty clear he's an
14 SNM member, and I think you've let in a lot of
15 evidence that has proven that. But at some point
16 there is a 403 prejudice where it's cumulative and
17 too much for the spillover. Because his family is
18 gang related, therefore Andrew must be gang related.
19 So I mean, it's come in that he is a gang member, a
20 fairly high ranking gang member. But at some point
21 I'm asking the Court to curb it, because there is
22 this guilt by association, and there is a 403
23 prejudice because it's getting to be very cumulative.
24 THE COURT: What do you have new with these
25 photographs? Anything?

1 MS. TORRACO: And relevance.

2 MR. CASTELLANO: The family connection, the
3 connections -- well, it's nice for the jury to see
4 who Frankie Gallegos is, what he looks like, the same
5 as other SNM members in this case.

6 MR. SINDEL: He can show a communion
7 picture of him if he wants, that will show what he
8 looks like.

9 THE COURT: Do you have one in your pocket?

10 MR. SINDEL: I'll produce one as we speak.

11 THE COURT: Isn't that the testimony, on
12 his wall, wasn't it?

13 MR. SINDEL: Yes.

14 MR. CASTELLANO: I'm not going to introduce
15 because it's hearsay is inside the cell of Frankie
16 Gallegos were two newspaper articles. One is on the
17 SNM case, and the other is the Burns case, he had
18 from November of 2012. So I'd offer evidence of a
19 brother's thoughts about his brothers being tied to
20 the Burns homicide. And like I said, I'm not moving
21 those, because they are basically newspaper articles
22 which contain hearsay. I have them here, but I'm not
23 moving those for that reason because they are stories
24 about each of the cases.

25 THE COURT: So other than the picture,

1 there hasn't been any picture of Frankie?

2 MR. CASTELLANO: That's correct.

3 THE COURT: What is the next one you're
4 trying to get in now?

5 MR. CASTELLANO: 992 is Andrew Gallegos,
6 obviously pictures of his family.

7 MS. TORRACO: And who is in --

8 MR. CASTELLANO: I don't know who Michael
9 is in the frame.

10 THE COURT: You don't know who the other
11 one is?

12 MR. CASTELLANO: I do not.

13 THE COURT: So that's not a picture of
14 Frankie; that's Andrew?

15 MR. CASTELLANO: Yes, Andrew is on the
16 right. They're labeled on the 992.

17 THE COURT: And you're showing that picture
18 to say it bolsters your case that he's an SNM Gang
19 member or a gang member?

20 MR. CASTELLANO: Yes, the 993 is Joe
21 Gallegos in the upper right-hand corner of the four
22 defendants. Exhibit 990 is, of course, Frankie
23 Gallegos.

24 THE COURT: Was there two of Frankie or
25 just one of Frankie?

1 MR. CASTELLANO: Just one. This exhibit
2 has three photographs at different angles. And then
3 Exhibit 991 is a phone book of his, which once again,
4 has the SNM in it, New Mexico and Valencia County,
5 and then 505.

6 MS. TORRACO: We can stipulate that Frankie
7 is a gang member. The problem I have with this 992,
8 how does this show they're in a gang? They're both
9 Hispanic? The one guy has a tattoo? The way they're
10 holding each other? Is it even relevant to show that
11 Frankie is a gang member?

12 MR. CASTELLANO: It certainly shows the
13 ties to his brother.

14 MS. TORRACO: This doesn't show ties.

15 MR. CASTELLANO: They're in his brother's
16 cell in Beaumont, Texas, in federal prison. I also
17 have letters that will follow this, that will tie
18 Andrew Gallegos to the SNM as well.

19 MS. TORRACO: Just because Frankie has a
20 picture of his brother in his cell, doesn't mean it's
21 relevant to show that Frankie is a gang member.

22 THE COURT: I think all four pictures have
23 some marginal relevance to the case. I don't think
24 they're substantially outweighed by the prejudicial
25 effect of them. I'm going to admit the four

1 pictures. I assume he's going to identify them as
2 pictures that were found in the cell, right?

3 MR. CASTELLANO: Yes.

4 THE COURT: That's going to be the
5 authentication of it.

6 MR. CASTELLANO: Yes, Your Honor.

7 THE COURT: Give me the numbers again.

8 MR. CASTELLANO: The 990 through 993.

9 MR. SINDEL: You mentioned some letters.
10 If you're going to introduce those letters, maybe we
11 should talk about them while we're here.

12 THE COURT: Do you have letters?

13 MR. CASTELLANO: Sure. I can go get them,
14 Your Honor.

15 THE COURT: Are they letters from who to
16 who?

17 MR. CASTELLANO: The letters are letters
18 found in Brandy Rodriguez' house during a probation
19 and parole search. One is a letter from Andrew
20 Gallegos, so it's a statement by a party opponent.
21 What Agent Acee will testify to is that the two
22 letters were in the same envelope. Andrew Gallegos
23 in his letter says he's including other letters which
24 would refer to this one. There is talk about SNM and
25 other gang members.

1 THE COURT: Who is the other letter that's
2 in the envelope? Who is it from?

3 MR. CASTELLANO: I'll have to get his name.

4 THE COURT: Are you trying to get both
5 letters into evidence?

6 MR. CASTELLANO: Yes, I think it could be
7 an adopted admission by Andrew Gallegos. He refers
8 to the letters and says he's including them in his
9 letter, and they are kind of in the same envelope at
10 Brandy Rodriguez' house, and both of them talk about
11 SNM Gang members.

12 MS. TORRACO: If I can address that.

13 THE COURT: I think it might be a stretch
14 to get the other one in. You might be able to get
15 evidence in that other letters are in there, but I
16 think to just include a letter and try to say that's
17 an adoptive admission, I think without more, it might
18 be a stretch. So I probably will let the letter in,
19 that's a party opponent, but not -- and you can
20 probably get in evidence there was other evidence if
21 it says it in the letter itself.

22 MR. CASTELLANO: It does. Maybe I should
23 bring that other letter because the person that's
24 introducing themselves to Brady Rodriguez, and
25 identifies Andrew Gallegos as a carnal, among other

1 things.

2 MS. TORRACO: It's offered for the truth of
3 the matter asserted.

4 MR. CASTELLANO: Sure, it is.

5 THE COURT: I just think that's probably a
6 stretch of adoptive that I'm not going to probably be
7 willing to adopt. So I'll probably keep the other
8 letter out.

9 MR. CASTELLANO: If I can, let me get those
10 letters to make sure we have the context.

11 MR. SINDEL: We haven't seen those letters.
12 I think they may have been disclosed late Friday.

13 MR. CASTELLANO: Yes, those are the letters
14 that I was asked to show Ms. Torraco on a break, and
15 explained them, and I showed them to Mr. Benjamin.
16 I'm sorry, I didn't know this was your witness.

17 THE COURT: You didn't show them to
18 co-counsel?

19 MR. SINDEL: We don't talk anymore.

20 MR. CASTELLANO: To show you the context.

21 MR. SINDEL: You take that label off,
22 you're just depriving them of valid advertisement.

23 THE COURT: The Judge shouldn't be
24 promoting a product. It's not a product, it's a
25 service.

1 MR. CASTELLANO: Exhibit 998, which is the
2 letter from Andrew Gallegos to someone identified as
3 Lizard, which the defense brought out earlier that
4 Andrew Gallegos referred to Brandy Rodriguez as
5 "Lizard."

6 MR. SINDEL: Did you give a copy of the
7 letter to Mr. Benjamin, so I can --

8 MR. CASTELLANO: I wrote down the Bates
9 stamp number this morning.

10 THE COURT: If we need copies, Ms. Bevel
11 can make them.

12 MR. SINDEL: I'd appreciate that.

13 MR. CASTELLANO: It's in evidence, but we
14 can make copies. So Exhibit 998 is, he says, Oh,
15 yeah, here's a couple of introduction letters for the
16 home girl, Jessica Barela. And so in the same
17 envelope is what Andrew Gallegos sends to Brandy
18 Rodriguez. That is Exhibit 989, which is the letter
19 referring to Robert Bargon, an SNM gang member,
20 referring to Smiley as "carnal." And it's also dated
21 June 21, 2015, which is the time period which Billy
22 Cordova said he was in -- the time he was in the
23 facility with Andrew Gallegos at Central New Mexico
24 Correctional Facility. So I think it also just shows
25 a tie between them, and to the gang.

1 MS. TORRACO: The contents --

2 THE COURT: I mean, I understand why you'd
3 want to do it, but I don't think it's going to pass
4 any hearsay exemption that I can think of. So I'll
5 keep the second letter out. Do you need copies of
6 these?

7 MR. SINDEL: Please.

8 THE COURT: Ms. Bevel, can you make copies
9 of these, then hand them back to -- give me a set,
10 too, so I have them up here with me as well.

11 MS. TORRACO: And so the Government
12 directing Agent Acee to the use of the word carnal in
13 the follow-up letter is also hearsay, and we would
14 ask for a ruling on that now so he can't get that in
15 through the back door.

16 THE COURT: If the letter is in evidence,
17 then I don't usually keep the parties from pointing
18 out the most relevant portions of it. So I probably
19 won't do that here.

20 MS. TORRACO: I thought that you said you
21 were keeping out the second letter.

22 THE COURT: That's true. If the second
23 letter is the one that has carnal in it, then that
24 should be kept out.

25 MS. TORRACO: Thank you very much.

1 (The following proceedings were held in
2 open court.)

3 THE COURT: All right. Mr. Castellano.

4 MR. CASTELLANO: Thank you, Your Honor.
5 I'd move Exhibits 990 through 993.

6 THE COURT: Not hearing any other objection
7 or comment, then I'll admit Government's Exhibit 990,
8 991, 992 and 993.

9 (Exhibits admitted.)

10 Q. Agent Acee, beginning with Exhibit 990,
11 I'll ask you who this person is?

12 A. That's Frankie Gallegos.

13 Q. And on the picture is he identified by his
14 other nicknames or aliases?

15 A. He is: Cunte and Frankie G.

16 Q. Circling something on the left side,
17 basically his rib area, what is that, if you can see
18 it from the photograph?

19 A. It's a Zia symbol; the letter S is in the
20 center of it, and it's shaded in.

21 Q. And showing you Exhibit 991. What can you
22 tell us about these items in terms of where they were
23 found?

24 A. It's a phone book found in his prison cell.

25 Q. Any significance to what I'm circling on

1 there, Exhibit 991? The number is 505?

2 A. Yes, the Albuquerque -- greater Albuquerque
3 area code, and the zero is also the 0 in "Nuevo."

4 Q. I'm circling the other item in the letter,
5 on the right-hand corner of that exhibit. What have
6 I circled?

7 A. The Zia symbol with an S in the it.

8 Q. And what does "Valencia County" mean to you
9 in terms of what cities or towns are in that county?

10 A. Well, Mr. Gallegos is from there, as are
11 his brothers. Belen and Los Lunas are in Valencia
12 County, and Los Chavez, too.

13 MR. CASTELLANO: I'm going to retrieve an
14 exhibit from defense counsel, if I can.

15 THE COURT: It may be up here with Ms.
16 Bevel.

17 THE CLERK: I gave the originals back to
18 Mr. Sindel.

19 Q. Let me show you the next, Exhibit 992.
20 Where was this exhibit found?

21 A. That was also found in Frankie Gallegos'
22 cell.

23 Q. Do you recognize anybody in this exhibit?

24 A. The gentleman on the right is Andrew
25 Gallegos.

1 Q. Let me show you Exhibit 993.

2 A. This photo was also found in Frankie
3 Gallegos' cell.

4 Q. And do you recognize anybody in that
5 exhibit?

6 A. Yes, the gentleman on the upper right is
7 Joe Gallegos.

8 Q. Is the person I've circled here?

9 A. Yes, sir.

10 Q. I want to ask you if any newspaper articles
11 were found in Frankie Gallegos' cell in the prison in
12 Beaumont, Texas?

13 A. Yes, at least two were.

14 Q. What were those two items?

15 A. One news article pertained to the arrest of
16 Andrew Gallegos and Joe Gallegos in the Adrian Burns
17 homicide. The second news article was an Albuquerque
18 Journal story, if I recall, that discussed the fact
19 that -- discussed the Phase 1 takedown, our arrest
20 operation.

21 MR. SINDEL: Objection, discussed.

22 THE COURT: I think that's enough of an
23 description, so you can stop there.

24 Q. Okay. So did that involve a newspaper
25 article about this case?

1 A. Yes.

2 Q. And did the other article cover the Adrian
3 Burns homicide?

4 A. Yes.

5 Q. I also want to ask you about a probation
6 and parole search of Brandy Rodriguez' house. Do you
7 remember that?

8 A. Yes, sir.

9 Q. Were you present for that search?

10 A. I was.

11 Q. And approximately when did that happen?

12 A. May I refer to my notes?

13 Q. Yes. If you have no recollection, I'll ask
14 you to refer to your notes to refresh your
15 recollection.

16 A. I brought them up here with me. It was on
17 March 28, 2016.

18 Q. Did you find any letters in the house?

19 A. Yes.

20 Q. Did you find any letters from Andrew
21 Gallegos?

22 A. Yes.

23 MR. SINDEL: Your Honor, if the witness is
24 refreshing his memory from notes, I think we have a
25 right to a copy of those notes.

1 THE COURT: You can probably take a look at
2 them.

3 A. Mr. Sindel, I may have misspoke. It's my
4 302. I'm sorry, that's what I have here.

5 MR. SINDEL: I didn't ask you any questions
6 at all.

7 A. I'll try not to answer.

8 Q. Let me ask you a question: What did you
9 refer to when you said your notes?

10 A. My 302.

11 Q. And what's the date of that 302?

12 A. March 28, 2016.

13 MR. CASTELLANO: May I approach the
14 witness, Your Honor?

15 THE COURT: You may.

16 Q. Let me show you what's been marked for
17 identification as Government's Exhibit 988. What is
18 Exhibit 988?

19 A. This is a letter from Andrew Gallegos to
20 Brandy Rodriguez.

21 Q. And does this appear to be a photocopy of
22 the original document?

23 A. Yes.

24 Q. Is it a fair and accurate depiction of what
25 it was when you collected it?

1 A. Yes.

2 MR. CASTELLANO: Your Honor, I move the
3 admission of Government's Exhibit 988.

4 THE COURT: Any further discussion on that?
5 Not hearing any, Government's Exhibit 988 will be
6 admitted into evidence.

7 (Exhibit was admitted.)

8 MR. CASTELLANO: May I publish to the jury,
9 Your Honor?

10 THE COURT: You may.

11 Q. Okay. The name Lizard is at the top. Does
12 that have any significance to you from this trial?

13 A. Yes.

14 Q. What significance does that have?

15 A. It was Andrew's nickname for Brandy
16 Rodriguez.

17 Q. And in reading this letter, I'm going to
18 highlight for you the mention of introduction
19 letters. Was this found in an envelope?

20 A. Yes.

21 Q. And were there any other documents in the
22 envelope?

23 A. Yes, there was another letter.

24 Q. And do you know the approximate timeframe
25 for when these letters were sent or dated?

1 A. I believe it was June 2016.

2 Q. Would it help to refresh your recollection
3 to take a look at either the letter or the envelope?

4 MS. TORRACO: Objection. I don't think he
5 said he doesn't remember.

6 THE COURT: Well, he's given an approximate
7 date. I'll allow the refreshing. Overruled.

8 MR. CASTELLANO: May I approach, Your
9 Honor?

10 THE COURT: You may.

11 Q. Agent Acee, do you have the envelope?

12 A. I do.

13 Q. At the table?

14 A. I have it up here.

15 Q. Let me have you take a look at the envelope
16 and see if it refreshes your recollection for a date
17 of these letters.

18 A. Thank you.

19 Q. What's the date?

20 A. The date on the letter is June 21, 2015.
21 According to the postage on the envelope, it's July
22 1, 2015.

23 Q. Now, looking at the letter itself, do you
24 see reference to an SNM Gang member in this letter
25 from Andrew Gallegos?

1 A. Yes, I see reference to three SNM members.

2 Q. In Government's Exhibit 988?

3 A. Yes, sir.

4 Q. Who are those members?

5 A. The first one, about two-thirds of the way
6 down the page is Billy Cordova, Shadow. Below that
7 are the other two individuals.

8 Q. Who are they?

9 A. Looney is Henry Hernandez. And then it
10 says, "and Leo Ulibarri," that's Pantelion Ulibarri.

11 Q. What, if any, significance does it have to
12 you regarding SNM business?

13 A. Well, as it pertains to Billy Cordova --

14 MS. TORRACO: Objection, speculation. He
15 doesn't know what was in the mind of the writer.

16 THE COURT: Well, he's investigated this
17 thing. I think he can state what the significance is
18 to SNM business. I'm not exactly sure what he's
19 about to say here on Billy Cordova, but I think he
20 can tie it to the SNM business. Overruled.

21 A. With regard to Billy Cordova, he's just
22 asking that Brandy or another lady write him letters.

23 Q. What about the other two?

24 A. The other two it says, "Tell Drew that
25 those two members have dropped out and they've joined

1 the dropout program."

2 Q. Do you see the word "shafote" there?

3 A. Shafote, yes.

4 Q. What does that relate to if you are
5 familiar with either that term, or shafa?

6 A. They're no good.

7 Q. Going back to threats for a second. Has
8 the FBI within the last week received any information
9 about potential threats to Karen Cartwright or Jason
10 Van Veghel?

11 A. Yes.

12 Q. And was Jason Van Veghel a witness in this
13 case?

14 A. Yes, sir.

15 MR. CASTELLANO: May have a moment, Your
16 Honor?

17 THE COURT: You may.

18 MR. CASTELLANO: Thank you, Your Honor. I
19 pass the witness.

20 THE COURT: Thank you, Mr. Castellano. Mr.
21 Sindel, are you going first? You're going last?

22 Mr. Solis?

23 CROSS-EXAMINATION

24 BY MR. SOLIS:

25 Q. Mr. Acee, how are you, sir?

1 A. Doing well, sir. Thank you.

2 Q. All right. So I heard you, on Friday, kind
3 of wholesale endorse the cooperators in this case,
4 and then a little bit today; for example, with Mr.
5 Jaramillo and Mr. Lucero. So I'm going to touch on
6 that a little bit.

7 But also with the subject on the subject of
8 payments. You understand that when we say: Did you
9 pay, or when we make reference to you making
10 payments, you understand that we're referring to the
11 US Government?

12 A. Yes, sir.

13 Q. All right. So no one is suggesting that
14 you took out some money out of your pocket and made
15 payments to any of the cooperators. We're suggesting
16 that the US Government, through you or Agent Roundy,
17 made these payments. You understand that?

18 A. Yes, sir.

19 Q. All right. And that is a fact, isn't it?

20 A. That payments have been made?

21 Q. Sure.

22 A. Yes.

23 Q. Through the Government. So --

24 A. It's the Government's money, yes.

25 Q. Right. So when we -- when I anyway, for

1 purposes of this examination say "did you,"
2 understand that I'm using that interchangeably with
3 "you" meaning the FBI? Are we clear?

4 A. I understand.

5 Q. All right, sir, thank you.

6 So this investigation where you've been the
7 case agent is several years in the making, isn't it,
8 sir? Mr. Acee?

9 A. Yes, sir.

10 Q. And your involvement has been ongoing since
11 when, sir?

12 A. March of 2015.

13 Q. Okay. And in that period of time as the
14 case agent, you've been able to become familiar with
15 the various players, the various defendants and the
16 various cooperators during that course, or during the
17 course of the investigation?

18 A. Yes.

19 Q. You better than most, you better than any
20 FBI agent for that matter; is that true?

21 A. You're giving me too much credit.

22 Q. Well, is it true or not?

23 A. I've become familiar with most of the
24 cooperators and defendants.

25 Q. Sure. And you being the case agent, you

1 assigned, for example, Agent Stemo, who was here -- I
2 don't know if it was today or Friday -- you assigned
3 her tasks; correct?

4 A. Yes, sir.

5 Q. All right. And so in that sense, you're
6 kind of the supervising agent in many respects?

7 A. In this case. But I've also served as her
8 training agent. So, yes.

9 Q. Okay. And of course you know that she's
10 reviewed -- I think we discussed that, when you and I
11 first talked here on this trial -- at this trial --
12 seems like six weeks ago -- she's reviewed the entire
13 case file, it appears; isn't that right?

14 A. I believe she has.

15 Q. And yet you, as the case agent, know that
16 just January of this year she revisited one of the
17 occupants of the pod where Rolando Garza was
18 murdered: Mr. Lorenzo Mora. You understand that,
19 right?

20 A. I'm not too familiar with that.

21 MR. SOLIS: Okay. May I approach the
22 witness, Your Honor?

23 THE COURT: You may.

24 Q. I'd like you to review just a cover sheet
25 of that copy.

1 A. Just the cover?

2 Q. Just the cover.

3 A. Okay.

4 Q. Now, having reviewed that, does that appear
5 to you to have been an occasion where Ms. Stemo
6 visited with Lorenzo Mora?

7 A. No.

8 Q. It's not?

9 A. No.

10 Q. What does it appear to be?

11 A. She's putting a cover letter on
12 something -- somebody else's work, probably another
13 agency.

14 Q. All right. And did you review that other
15 agency's report?

16 A. No, sir.

17 Q. Okay. So have you had contact with Lorenzo
18 Mora since January of this year?

19 A. I don't know that I've ever met him. But
20 if you mean the greater FBI --

21 Q. Yeah.

22 A. -- I'm not certain.

23 Q. Okay. He was one of the occupants of the
24 Rolando Garza pod, Ocean 1 yellow, I think it was?

25 A. Yes, sir.

1 Q. All right. And he's not been summoned as a
2 witness?

3 A. I don't believe he's a government witness,
4 no.

5 Q. Right. Nor was he indicted?

6 A. No, he wasn't indicted.

7 Q. You're very familiar with Mr. Lucero;
8 correct?

9 A. Leroy?

10 Q. Yes.

11 A. Yes.

12 Q. Were you here for his examination, or were
13 those occasions where you stepped out and were gone a
14 few days?

15 A. There have been a couple of occasions where
16 I've stepped out.

17 Q. Right.

18 A. But I think I was here for the start of it.

19 Q. And, of course, Mr. Castellano touched with
20 you or touched the topic of have you made payments to
21 Mr. Lucero?

22 A. I did miss that part. I'm aware of that
23 now, yes.

24 Q. Right. Just moments ago he touched on that
25 as well, didn't he?

1 A. Yes.

2 Q. And he had been talking with you -- and I
3 remember you're a member of the FBI -- since at least
4 2011, and ongoing up until just very recently,
5 actually, about four or five months ago; is that
6 right?

7 A. No. You're correct in that he started
8 around 2011. And then there was gap between Agent
9 Roundy's case and when I eventually talked to him.

10 Q. And in that gap there was not a change of
11 statements up until earlier this year; is that true?

12 A. What do you mean by that?

13 Q. Well, what I mean is, in 2011, you had
14 extensive contact -- when I say "you," I mean the
15 FBI -- with Mr. Lucero over the course of several
16 months, and also 2012; is that right?

17 A. Yes.

18 Q. And through those contacts you learned,
19 according to Mr. Lucero, that Christopher Chavez
20 related to him --

21 MR. CASTELLANO: Objection, calls for
22 hearsay.

23 THE COURT: I think --

24 MR. SOLIS: I'm not asking him, one, what
25 he said; and, two, this is still impeachment of --

1 one, he's vouching for these witnesses, and also the
2 impeachment of Mr. Lucero.

3 THE COURT: Well, let me hear the
4 statement. If you want to approach so I can hear the
5 statement outside the presence of the jury, I'd be
6 glad to hear it, but I --

7 (The following proceedings were held at the
8 bench.)

9 THE COURT: What is it going to be?

10 MR. SOLIS: You learned from Mr. Lucero who
11 the participants were. One from Mr. Lucero, but
12 Christopher Chavez allegedly told him participants in
13 this murder in 2001.

14 THE COURT: Well, I think that would be
15 hearsay, if he's going to --

16 MR. SOLIS: These are statements that are
17 going to impeach Mr. Lucero. But this witness is
18 vouching for the credibility, endorsing the witnesses
19 late Friday and today again.

20 THE COURT: What are you trying to impeach
21 Mr. Lucero from?

22 MR. SOLIS: Mr. Lucero --

23 THE COURT: What statement of Mr. Lucero
24 are you trying to impeach?

25 MR. SOLIS: Mr. Lucero made statements

1 where he basically put there at the pod a person who
2 was impossible to be there. And that was the story
3 throughout.

4 THE COURT: Who was that person?

5 MR. SOLIS: The person was Archie Varela,
6 otherwise known as Pumba. And that person, that
7 statement wasn't until January of this year, when
8 Mr. Lucero met with Mr. Acee, and then changed. And
9 I think that's impeaching. But this witness is
10 endorsing these witnesses and vouching for the
11 credibility.

12 THE COURT: Do you recall the testimony
13 that way, that Mr. Lucero put Mr. Varela at the
14 scene?

15 MR. SOLIS: No. Mr. Lucero did not testify
16 to that. There are statements in the file, however,
17 that indicate that's the case.

18 THE COURT: I think, though, that the
19 statement has to be in front of the jury to impeach
20 him. Because if you're going to bring out a
21 statement, the whole purpose of it would be to tell
22 the jury that Mr. Lucero is not truthful on the
23 stand, and so if he didn't make the statement here in
24 the courtroom --

25 MR. SOLIS: He did not.

1 THE COURT: -- I'm not sure you can impeach
2 another statement if the jury doesn't have it.

3 MR. CASTELLANO: I would say the defense
4 stayed away from the statement to avoid the
5 statements when Mr. Lucero was on the stand. They
6 had the opportunity to ask him the questions, but now
7 they're getting into this through Mr. Acee.

8 THE COURT: I think the only purpose would
9 be for impeachment.

10 MR. SOLIS: That is true.

11 THE COURT: If the statement wasn't before
12 the jury or come in some other way before the jury, I
13 don't think that it's a statement that needs to be
14 impeached. Because its only purpose would be to see
15 if Lucero was telling the truth.

16 MR. SOLIS: That's true, that's correct
17 (The following proceedings were held in open court.)

18 THE COURT: Mr. Solis.

19 MR. SOLIS: Pass the witness, Your Honor.

20 THE COURT: Thank you, Mr. Solis.

21 Ms. Torracco, are you next?

22 MS. TORRACO: Yes. In all candor, Your
23 Honor, I don't know if I'm next, but I'm going to
24 take it.

25 THE COURT: It doesn't look like anybody is

1 stopping you.

2 CROSS-EXAMINATION

3 BY MS. TORRACO:

4 Q. Good morning, Agent. How are you?

5 A. Well, thank you.

6 Q. So you've had the benefit of sitting
7 through most of this trial; isn't that true?

8 A. Is that a benefit?

9 Q. Well, it's a benefit to me. I'm glad to be
10 here.

11 A. I don't consider it a benefit.

12 Q. Isn't it true that you have sat through
13 most of this trial?

14 A. I have.

15 Q. And you've watched a lot of your
16 cooperators testify; isn't that true?

17 A. I have.

18 Q. And you've been able to assess what
19 information is weak or lacking in each of the cases;
20 isn't that true?

21 A. I think I've done that since the beginning.

22 Q. Yeah, well, since the trial started you've
23 also had people go out and gather more information;
24 isn't that true?

25 A. Yes.

1 Q. And that would be based on things that have
2 happened in court, and you can get another agent, or
3 yourself, you can go out and figure out what needs to
4 happen before we do closing statements, right?

5 A. Well, my timeline is not closing
6 statements, but when I see a void or an area that I
7 think needs additional attention, I agree with you,
8 I'll address that.

9 Q. Right. So you've been in court, able to
10 assess which cases need more work; isn't that true?
11 Yes or no?

12 A. Sure.

13 Q. So let's start with the money that was
14 discussed regarding the Adrian Burns matter. Isn't
15 it true that no one ever saw all this alleged money
16 that Andrew Gallegos was supposed to have?

17 A. I thought I heard his girlfriend say she
18 saw it.

19 Q. Okay. Well, we'll let that be the purview
20 of the jury of what they remember Charlene Baldizan
21 testifying. But no one ever recovered any money;
22 correct?

23 A. That is correct.

24 Q. And you went out and you talked to several
25 people, including Brian Giron, who allegedly Charlene

1 told you that they had seen money, and in fact --

2 MR. CASTELLANO: Objection, calls for
3 hearsay.

4 MS. TORRACO: I just want to finish the
5 question.

6 THE COURT: Well, I think we've gone far
7 enough. Sustained.

8 Q. Okay. But isn't it true you did follow-up
9 investigation to find out about the money, and that
10 turned out to have been fruitful?

11 A. I don't agree with you.

12 Q. Okay. And you would also agree that my
13 client didn't pay for the hotel room; isn't that
14 true?

15 MR. CASTELLANO: Objection, calls for
16 hearsay and foundation.

17 MS. TORRACO: Well, it's based on his
18 investigation, and that was an important part of the
19 investigation.

20 THE COURT: Well, if he got the information
21 from an oral statement by somebody out of court and
22 it's being offered to the truth, I think it would be
23 hearsay. So I'll sustain.

24 Q. Based on the investigation, isn't it true
25 that my client did not pay for the hotel room?

1 (Mr. Castellano stood up.)

2 THE COURT: Sustained.

3 Q. So let's go to the warrant that you
4 executed in 2016. And you were a part of that
5 execution; correct?

6 A. I probably did a couple dozen that year.
7 Which one, ma'am?

8 Q. Well, we're discussing the Adrian Burns
9 murder?

10 A. Again, I probably did maybe 50 warrants in
11 2016. Are we talking about the one on Joe's house at
12 04 Erin Court?

13 Q. Yes, I'm going to direct your attention to
14 the Government's Exhibits 995, 994, 996, and 997.
15 And those are the exhibits just admitted by
16 Mr. Castellano. Were you present when those
17 photographs were taken?

18 A. Yes, ma'am.

19 Q. And you don't know whether or not Andrew
20 lived there at that time, do you?

21 A. At the time of the warrant?

22 Q. Um-hum.

23 A. No, he was -- no one was -- well, there was
24 a transient in there, but he was not -- Andrew
25 Gallegos was not in the house.

1 Q. Thank you. And he was not living there at
2 that time; isn't that true?

3 A. No.

4 Q. It's not true?

5 A. Yes, it is true; no, he wasn't living
6 there.

7 Q. So I want to direct your attention to
8 Government's Exhibit 988, which is the letter that
9 was admitted, written by Andrew Gallegos.

10 A. Okay.

11 Q. Do you remember that letter?

12 A. I do, and I have a copy here.

13 Q. Okay, terrific. So regarding this letter,
14 isn't it true that there a term in here:
15 S-H-A-F-O-T-E. And isn't it true that you thought
16 that was a Spanish word, right?

17 A. I think it's a slang word.

18 Q. Okay. Did you research that word?

19 A. No.

20 Q. Would you be surprised to learn that it's
21 actually an Israeli term?

22 A. Used by New Mexican gang members? I guess
23 it's possible, sure.

24 Q. Well, I guess that we disagree that my
25 client is a gang member. And I would like to direct

1 your attention to the rest of that letter. Did you
2 look up from Philippians 4:13 that my client quoted?

3 A. I did.

4 Q. And what is that verse?

5 A. It's been some time.

6 Q. "I can do all things through Christ who
7 gives me strength"?

8 A. You're right.

9 Q. And what about Romans 12:21?

10 A. I also looked at that.

11 Q. Okay. And what is that?

12 A. I just don't remember it off the top of my
13 head.

14 Q. And that particular verse is: "Do not be
15 overcome by evil, but in all things do good"?

16 A. That sounds familiar.

17 Q. Okay. So at the end of this letter, when
18 my client expresses that he is praying for people,
19 wouldn't you agree that that would be consistent with
20 the term S-H-A-F-O-T-E, an Israeli term for being
21 transported to a better place?

22 A. No, I don't agree.

23 Q. Okay. Well, I guess we can agree to
24 disagree on that. So let's go up a little bit more
25 into this letter. Would you agree that men who are

1 in prison get lonely?

2 A. I imagine.

3 Q. You've spoken to lots of them, we've seen
4 them over the past five weeks?

5 A. I don't ask them about their loneliness.

6 Q. Would you agree that they get lonely and
7 they want a friend? And do you see something wrong
8 with someone who is trying to recruit a friend or a
9 pen pal for another inmate?

10 A. No.

11 Q. And especially in the same letter where he
12 says that he's praying for people, isn't that true in
13 the same letter where he's saying he's praying for
14 people?

15 A. He does say that in the letter.

16 Q. As a matter of fact, let's publish the
17 Government's Exhibit 988, please. I want to direct
18 your attention to the bottom part of letter where my
19 client says, "Tell Drew" -- do you know the SNM
20 member whose name is Drew?

21 A. No.

22 Q. No. And isn't that true that you've
23 researched that only to find out that there is no SNM
24 member named Drew? Isn't that true?

25 A. No, I researched the other two names. I'm

1 not sure who Drew is, though.

2 Q. You didn't research who Drew is, because
3 wouldn't it be important who he wants to be told,
4 Tell Drew that Looney and Leo dropped out?

5 A. No, because what was more important to me
6 is who those two were, which gang they were from.

7 Q. Isn't it important, and wouldn't it be a
8 celebration that those two people are now in the
9 dropout program, that they're no longer SNM members?

10 A. I don't think so.

11 Q. You don't think that's how the letter is
12 read?

13 A. I don't.

14 Q. Would it be fair to say that you're reading
15 it through a bias? "Tell Drew that Looney and this
16 Leo Ulibarri joined the dropout program. Shafote,"
17 which is Israeli for they have a place to go?

18 A. I don't see that there.

19 Q. And isn't it true that he continues to talk
20 about Philippians and Romans: "I can do all things
21 through Christ who gives me strength," and "Overcome
22 evil and do good." Thank you.

23 THE COURT: Thank you, Ms. Torraco.

24 All right. Who else has cross-examination
25 of Mr. Acee? Do you want to go, Mr. Castle?

1 MR. CASTLE: Sure.

2 THE COURT: Mr. Castle.

3 CROSS-EXAMINATION

4 BY MR. CASTLE:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. I promise this will be considerably shorter
8 than the last time, at least, we talked in this
9 forum.

10 Mr. Acee -- I'm sorry, Agent Acee -- in
11 your work on the SNM, did you -- with the assistance
12 of some other people working for the FBI -- put
13 together a chart which the leaders of the SNM were
14 set out, and then people who you called just members
15 of the SNM, were all out? Do you recall that?

16 A. Yes. And below that were associates.

17 Q. And that was -- in fact, there is one
18 downstairs in the marshal's office right now. Do you
19 recall seeing that?

20 A. No. It's probably a pretty old one, but --

21 Q. Now, I imagine if it had all the associates
22 and all the members, you probably wouldn't want that
23 out there because some of the people have not yet
24 been arrested and taken in?

25 A. I can tell you about my chart. Maybe the

1 marshals have something different.

2 Q. No, I'm talking about your chart is the one
3 that's downstairs.

4 A. So my chart has, I believe, just people
5 we've arrested either on a state or federal charge.

6 Q. Okay. And I didn't want to have them bring
7 it up here, because I didn't know whether it was --
8 contained some people or information that you didn't
9 want out, okay? But I want to approach you for a
10 minute. Agent Acee, you had a chart that had your
11 name on it and Task Force Officer Mark Myers at the
12 top. Do you recall that?

13 A. I'm kind of wondering if this is my chart,
14 sir, because mine doesn't look like that.

15 Q. Oh, I know. We can't take photographs of
16 things in the courthouse, so we put this together.

17 A. Okay.

18 Q. Do you recall that your chart with your
19 name on it had nine leaders of the SNM, and then area
20 of members, then an area I think you said of
21 associates? Do you recall that?

22 A. I do. But are you asking me to say that
23 this is a row?

24 Q. Well, I'm asking you if you remember that?

25 A. I do.

1 Q. And you recall that the nine people you had
2 down there as leaders were: Gerald Archuleta, Robert
3 Martinez, Mario Rodriguez, Roy Paul Martinez, Anthony
4 Ray Baca, Ramon Clark, Juan Mendez, and Julian
5 Romero?

6 A. No, sir.

7 MR. CASTLE: Are we going to take a break
8 in a little while, Your Honor?

9 THE COURT: Yeah, in about 10, 12 minutes.

10 Q. Okay. I'm going to ask you to go
11 downstairs in the marshal's office, take a look at
12 it, and write down the names of everybody that you
13 had on the chart, okay?

14 A. Can I take a picture of it?

15 MR. CASTLE: If the Court allows you to.

16 THE COURT: Talk to the marshals about
17 that.

18 THE WITNESS: I'll talk to one of the
19 supervisors down there.

20 Q. Okay. We'll try to do that. And we'll get
21 back to you on that.

22 Agent Acee, you were talking yesterday
23 about how you use different techniques to kind of
24 extract or gain the cooperation of particular SNM
25 members, right?

1 A. Yes, sir.

2 Q. And would it be fair to say that what you
3 were trying to do -- and I'm not being critical --
4 but you're trying to exploit a particular weakness
5 that you might have seen with an individual?

6 A. Sometimes, yes.

7 Q. So, for example, you would talk and find
8 out if someone might have a drug problem, and they
9 might a good target to try to get on the phone and
10 see if they'll make a drug deal, where they could be
11 arrested, and then eventually turned into an asset?

12 A. If I understand you correctly, like someone
13 that might be selling drugs?

14 Q. Yes.

15 A. Yes.

16 Q. And we heard of an exchange that happened
17 between Mr. Sammy Griego and Gerald Archuleta, where
18 that was attempted to be done, right?

19 A. Yes.

20 Q. And then other people, it sounded like,
21 might have a weakness for perhaps moving guns or, you
22 know, a felon that you thought might be in possession
23 of a gun, where if they were arrested on that, they
24 might come and work or assist you; is that right?

25 A. It's possible, yes.

1 Q. And so all these people that we're
2 talking -- so I think there are -- numerous of the
3 witnesses we heard, you employed those strategies
4 with, in addition to perhaps the third strategy
5 being, you know, charge him with a bunch of things
6 you know about, and put pressure on him that way,
7 right?

8 A. That adds pressure, yes.

9 Q. Okay. So like, for example, Jake Armijo,
10 he was charged first; then he came in, right?

11 A. Yes, sir.

12 Q. And Mr. Archuleta was charged, and you were
13 about to write up overt acts on another?

14 A. Gerald Archuleta, yes.

15 Q. And I think that would apply to -- oh, I'm
16 trying to remember who all testified -- but a lot of
17 the folks: Mario Rodriguez, for example, right?

18 A. Most of those men have been charged, and
19 then they came on board.

20 Q. And you would charge them with a lot of
21 overt acts that you had evidence and probable cause
22 on, right?

23 A. In the RICO conspiracy, yes.

24 Q. In fact, you go to a Grand Jury, get
25 probable cause. So, for example, Jake Armijo had 20

1 some-odd charges or overt acts, and you had to
2 present evidence to the Grand Jury, in which the
3 Grand Jury would find probable cause that they
4 committed those crimes?

5 A. Yes.

6 Q. Now, of the people that testified in this
7 trial, do you recall any of them -- I think one other
8 way of doing it was to show up at their parole
9 officer's meeting, kind of, and confront them, and
10 put them in a situation where they're kind of scared,
11 and then decide to go one route with them?

12 A. Like with Sammy Griego that happened
13 because he had the letter. But to be clear, yeah, I
14 try to meet newly released SNM members at their
15 parole office. I still do.

16 Q. And you would tell them things at times
17 about -- I think you've testified about, you know,
18 someone you got to put on the east coast and got a
19 job, and things like that, right?

20 A. Yes.

21 Q. So kind of a hammer sometimes, and a
22 carrot -- I guess, it's a stick and a carrot, right,
23 that you could use, right?

24 A. Isn't there always?

25 Q. Okay. And you would tell them on some of

1 these witnesses that some of the dudes that were on
2 the street, that were working with you, would kill
3 people?

4 A. Sounds like you're quoting me.

5 Q. Well, yes, exactly.

6 A. I probably said some stuff like that.

7 Q. And I think, you know, for example, with
8 one individual you said, "I've just arrested the guys
9 that killed Shane Dix," and then you're telling him
10 they're not -- they're out of custody -- or you just
11 arrested them -- I'm sorry, you just arrested them?

12 A. We've had conversations like that. I'm
13 only hesitating because I noticed I was misquoted
14 earlier. I think it was Mark Myers had said some of
15 the stuff that was attributed to me. But to be fair,
16 yes, I've said things like that.

17 Q. Mark Myers would use that kind of -- maybe
18 saltier language than you would use, saying "We put
19 murderers on the street as long as they work for us,"
20 right?

21 A. I think he might have said that a little
22 more than I did.

23 Q. Yeah, I think that's the salty part.

24 And then would you tell people sometimes
25 that -- some of these potential informants -- that

1 there would be people that had -- are making a whole
2 bunch of money now because they were straight up with
3 you?

4 A. I'm not sure about that one, sir.

5 Q. Would you like to look at the transcript?

6 A. Please.

7 Q. I didn't highlight it for you, I
8 highlighted it for me. So if you can read it here,
9 and go on to the next page.

10 A. Thank you.

11 Q. Does that refresh your memory?

12 A. Yes.

13 Q. So did you tell at least one person, one of
14 the potential witnesses, that you had people who were
15 making a whole bunch of money now because they were
16 straight up with you?

17 A. That's a little out of context, but --

18 Q. Explain. I don't want to leave anything
19 out of context here.

20 A. Thank you. I was pointing out that
21 somebody was straight up with us, they've been
22 relocated, they got a union job, and they were
23 making, like you said, good money, or a lot of money
24 now.

25 Q. Okay. And then -- okay, so they were

1 earning money, not through the FBI, but through a
2 good job that they got hooked up with?

3 A. Yes, sir.

4 Q. And that's -- you know, in some ways when
5 that happens, it's not really a one-time payment they
6 get. They're getting a future where they can make
7 money through their whole life, right?

8 A. If that were true, but that's a fictional
9 statement.

10 Q. Oh, okay, I'm sorry. So, okay, you're
11 saying that to try to convince them to assist you,
12 but it's not true, right?

13 A. No, it was true that he was relocated. He
14 wasn't located on the east coast. We all know where
15 he went.

16 Q. Right.

17 A. And he never had a union job.

18 Q. I'm not saying you did anything improper.
19 You're allowed to do that in order to try to get
20 people to do what you're trying to get them to do,
21 right?

22 A. In that context, yes.

23 Q. And then, at least with this individual,
24 you're telling him this is a person who was arrested
25 with a gun that was a felon, right?

1 A. It was Lovato, right?

2 Q. Yes. And you're telling him you basically
3 can work off a gun case; that's nothing compared to a
4 body?

5 A. Correct.

6 Q. So you're saying: If we let guys who have
7 bodies, meaning killed people in the streets, they
8 cooperate for you, that's not going to be really
9 much -- much sweat off your back, right?

10 A. You should talk to us, yes.

11 Q. Now, of all the witnesses that testified
12 before this jury, did any of them -- did you just go
13 to their home and ask them to voluntarily sit down,
14 without any promises or without any threats -- not
15 threats, but neither the carrot nor the stick?

16 A. A couple, yes.

17 Q. That testified here today -- or in this
18 trial?

19 A. Yes, sir.

20 Q. Who would that be?

21 A. If you'd give me just a moment.

22 Q. I'm talking about people that are out.

23 A. I'm starting with the most recent. I don't
24 believe I ever threatened Michael Jaramillo.

25 Q. Okay.

1 A. The older gentleman, Lawrence --

2 Q. Oh, Lawrence Torres?

3 A. -- Torres. I really don't think we
4 threatened him with anything.

5 Q. Okay.

6 A. Just asked him to come in.

7 Q. As far as Mr. Jaramillo is concerned, I
8 mean, he'd be pestered by -- I'm not using -- I'm not
9 trying to be critical -- but FBI agent after FBI
10 agent went to his home on numerous occasions to try
11 to get him to admit to what he had done, right?

12 A. Yeah. Make no mistake about it, I kept
13 telling him to go out there.

14 Q. In fact, I think you even had a warrant at
15 one point, because he failed to appear in court,
16 right?

17 A. I asked for a warrant, and then I think
18 there was -- within a short period of time there was
19 a misunderstanding and we cleared it up. But yes, I
20 pushed for an arrest warrant.

21 The third person I thought of was a
22 gentleman that's in NMCD custody. I hadn't met him
23 yet. I walked up here on one of the breaks and said
24 hello to him. And that was -- can you help me out?
25 He came in from -- he was in state custody.

1 Q. But that wouldn't have happened when he was
2 first approached? I'm talking about when they're
3 first approached?

4 A. He was first approached at RPP. And we
5 just asked him -- we didn't threaten him. We just
6 asked him to come down and --

7 Q. Now Mr. Garcia, you didn't threaten him at
8 all really, did you? Billy Garcia, just for the
9 record.

10 A. No, I think I threatened him.

11 Q. Well, you were really polite with him, and
12 he was polite with you, right?

13 A. Well, I can politely threaten somebody.

14 Q. I hope to never see that side of you,
15 Agent.

16 A. I just -- I think to be fair to Mr. Garcia,
17 Billy Garcia, I told him we'd be coming, and I think
18 I even mentioned coming with tanks. So I think
19 that's a threat.

20 Q. Okay. And you all left?

21 A. And you're accurate to say it was polite.
22 And I actually enjoyed talking to him.

23 Q. And he left on his bicycle, right?

24 A. I think he stayed home to watch us leave.

25 Q. Okay. There was an individual here that

1 testified by the name of Javier Alonso. Were you
2 here when he testified?

3 A. I think that was one of the days I was
4 away. But I know who he is.

5 Q. Well, Mr. Alonso, he testified that Billy
6 Garcia was SNM. Would you just assume that for a
7 moment?

8 A. Okay.

9 Q. You actually interviewed Javier Alonso,
10 right?

11 A. I believe so.

12 Q. And Javier told you that -- actually, that
13 Billy Garcia --

14 MR. CASTELLANO: Objection, calls for
15 hearsay.

16 MR. CASTLE: Well, it impeaches Mr.
17 Alonso's statement.

18 THE COURT: Why don't y'all approach and
19 let's talk about the statement here.

20 (The following proceedings were held at the
21 bench.)

22 THE COURT: So is the statement that you're
23 wanting to impeach is Mr. Alonso's testimony that
24 Mr. Garcia was SNM?

25 MR. CASTLE: Yes, is SNM. And when he was

1 interviewed by Agent Acee, he said that Mr. Billy
2 Garcia had a hit out on him because he was no longer
3 SNM. So that impeaches his statement at trial.

4 THE COURT: Mr. Alonso's statement?

5 MR. CASTLE: Yes.

6 THE COURT: Okay.

7 MR. CASTELLANO: It sounds like -- I don't
8 know what the transcript shows.

9 THE COURT: I can instruct the jury on Mr.
10 Alonso's --

11 MR. CASTELLANO: I don't have the
12 transcript in front of me. And I don't know exactly
13 what the context was with Billy Garcia.

14 THE COURT: Why don't I let him testify,
15 and I'll give the jury a limiting instruction that
16 they can only consider it for purposes of whether Mr.
17 Alonso was telling the truth when he was testifying.

18 MR. CASTLE: And I'm going to use very
19 particular leading questions on this, Judge, because
20 I think Mr. Alonso went on to say -- not in his
21 hearing, but in the interview -- it was not put a hit
22 on my client. Obviously, he would have heard that
23 from either Mr. Troup or someone else, right? So
24 it's hearsay, but I'm going to use very particular
25 language with that.

1 THE COURT: To avoid that.

2 MR. CASTLE: And I'm going to go to the
3 witness with a sticky note on my monitor saying
4 "Don't mention Troup's name."

5 THE COURT: Well, you can lead --

6 MR. CASTLE: Yeah.

7 THE COURT: -- no problem there. You can
8 just say: I want a yes or no answer. So you limit
9 it.

10 MR. CASTELLANO: The question is, what does
11 that do to possibly open the door?

12 THE COURT: Well, I'll just rule it won't
13 open the door. If we manage to keep him just
14 answering your questions: Yes, no, it won't open the
15 door.

16 MR. BURKE: Did you hear that, Randy?

17 MR. CASTELLANO: I heard it, but I have
18 some concerns. We're talking about multiple hearsay
19 statements here by Alonso.

20 THE COURT: I'm going to give an
21 instruction that they can't consider it for the
22 truth, so it's not going to be hearsay.

23 MR. CASTLE: I'm not going to ask him
24 anything Alonso heard.

25 MR. CASTELLANO: Then, like I said, we

1 start taking statements out of context and try to
2 slice them that thin, that's my concern. It doesn't
3 give the jury the whole story about what was said,
4 or --

5 THE COURT: Well, we're well beyond that.

6 MR. CASTELLANO: I don't know, Judge.

7 (The following proceedings were held in
8 open court.)

9 THE COURT: All right. I'm going to let
10 Mr. Acee answer this question about what Mr. Garcia
11 has said to him. But you can use it for only one
12 purpose. You can't use it for considering the truth
13 of the matters that are going to be asserted by
14 Mr. Billy Garcia. You can only use it to determine
15 whether Mr. Alonso was being truthful. You can use
16 it for his credibility when Mr. Alonso testified
17 before you. So you can use it only for determining
18 Mr. Alonso's truthfulness and accuracy, not for the
19 truth of the matter of what Mr. Billy Garcia -- about
20 Mr. Acee is going to tell you Mr. Billy Garcia said
21 to him.

22 Mr. Castle.

23 MR. CASTLE: I'm going to try to find that
24 document, first, Your Honor. I'm sorry, my computer
25 went to sleep, apparently with everybody else that's

1 probably listening to me.

2 THE COURT: Do you want to take a break at
3 this point, or do you want to get the answer here?

4 MR. CASTLE: Yes.

5 THE COURT: Which one?

6 MR. CASTLE: Obviously, I need some sleep,
7 Your Honor.

8 THE COURT: Take a break?

9 MR. CASTLE: Yes.

10 THE COURT: All right. Let's take a break
11 for about 15 minutes. All rise.

12 (The jury left the courtroom.)

13 THE COURT: All right. We'll be in recess
14 for about 15 minutes.

15 (The Court stood in recess.)

16 THE COURT: All right. We'll go on the
17 record. I think we've got each defendant back in. I
18 think we've got a lawyer for each defendant.

19 EXCERPT CONCLUDED
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1 EXCERPT

2 THE COURT: All right, go ahead.

3 MR. SINDEL: I talked earlier this morning
4 about the incident of testimony with Agent Acee about
5 a firearm bombing and another shooting. We did get
6 some of those reports. I haven't had a chance to
7 review them. I'm not sure that we'll complete Mr.
8 Acee's testimony today. If need be, I suppose we
9 could call him as a defense witness, if the Court
10 would allow us to cross-examine him.

11 THE COURT: What do you mean, if you call
12 him as your witness, then cross-examine him?

13 MR. SINDEL: You know, in other words, we
14 could maybe cross-examine as a hostile witness. I
15 don't want to --

16 THE COURT: Well, I think Mr. Acee is a
17 hostile witness, so you're going to get to lead him,
18 if that's what you're asking.

19 MR. SINDEL: Okay. That's all I'm asking.

20 THE COURT: Yeah, I don't think --

21 MR. SINDEL: Look at him.

22 THE COURT: Well, hostile in a legal sense.
23 But anybody that says he brings his own tanks in a
24 civil way, I don't know, I'll let you be the judge of
25 that, right. I don't have any tanks.

1 All right. All rise.

2 (The jury entered the courtroom.)

3 THE COURT: All right. Everyone be seated.

4 All right. Mr. Acee, I'll remind you that
5 you're still under oath.

6 Mr. Castle, if you wish to continue your
7 cross-examination of Mr. Acee, you may do so at this
8 time.

9 MR. CASTLE: Yes, thank you, Your Honor.

10 THE COURT: Mr. Castle.

11 BY MR. CASTLE:

12 Q. Agent Acee, over the break, did you have an
13 opportunity to go and look at the marshal's document?

14 A. Yes, sir.

15 Q. And was that authored by you at some point
16 in time or with the help of the FBI?

17 A. I think an FBI analyst probably
18 communicated with the marshal's analyst.

19 Q. Okay.

20 A. It looks like the FBI analyst made that
21 chart.

22 Q. Okay. And did you recall that was dated
23 August 2015?

24 A. Yes, sir.

25 Q. So that would have been around the exact

1 time that you first went and tried to talk to Billy
2 Garcia?

3 A. Off the top of my head, I don't remember.
4 But it was in 2015.

5 Q. Okay. Would you take my word for it that
6 the first time you went to talk -- well, the only
7 time you went to talk to Billy Garcia, was in August
8 2015?

9 A. Yes, sir.

10 Q. Now, did you have an opportunity to also
11 look at your own version of that kind of flow chart?

12 A. Yes, sir.

13 Q. And you showed it to me on your phone?

14 A. I did. I have a copy of it over there,
15 too.

16 Q. And there was a section for leadership; is
17 that right?

18 A. Yes, sir.

19 Q. And there are nine people that were on
20 that, that were depicted? Do you want look at your
21 phone?

22 A. Sure. I left it over there. I didn't
23 bring it up here with me. But the chart is actually
24 behind Mr. Castellano, against the wall there, if you
25 want me to look at it.

1 Q. Just again, I'm not going to have you go
2 over all of it, or even admit it. But this is your
3 chart?

4 A. Yes, sir.

5 Q. So yours has seven, right?

6 A. Yes, sir.

7 Q. The one downstairs has nine?

8 A. Yes.

9 Q. In any event, neither of those have Billy
10 Garcia in the leadership area; is that right?

11 A. Correct.

12 Q. Now, some of the people that were on the
13 leadership were more historical leaders that were not
14 up to the current time, right?

15 A. I think I disagree. I think I went with
16 the more current leaders. Like I didn't have Angel
17 Munoz and others on it.

18 Q. Gerald Archuleta, he testified he stopped a
19 while ago.

20 A. I just don't agree with him.

21 Q. Okay. We'll get to that in a few minutes.

22 Now, Julian Romero hasn't been -- he's
23 still on there. He's more of an historical leader,
24 right?

25 A. Yes, I think he wielded a lot of influence

1 in his neighborhood, but I would agree with you, more
2 of an historical.

3 Q. There has been a discussion about
4 questionnaires that were used. And I think you said
5 only one person that you can recall was given it to
6 fill out and bring back; is that right?

7 A. Yes, sir.

8 Q. But the questionnaires were used by agents
9 so that they could question people with some clarity
10 and some accuracy as to the details, et cetera?

11 A. Yes, sir.

12 Q. I'm going to approach you with two
13 questionnaires, and ask you if these are the two
14 questionnaires. One is dated December 2016, and one
15 is dated February 2017.

16 A. Can I ask you a question about one of them?

17 Q. Sure.

18 A. Has it been changed, like the font?

19 Q. I don't think -- well, it was just printed
20 from what was provided to us in discovery.

21 A. Okay. I'm not sure what to do with that,
22 but --

23 Q. Okay. Just look through them, if you can,
24 and see if they appear to be the two versions. If I
25 pointed you to some difference in questions, would

1 that refresh your memory as to whether these are the
2 two versions?

3 A. Yes. I think I know what the differences
4 are. Just the format of it looks a little different.
5 I'm not suggesting anything. You asked me to look at
6 it.

7 Q. Do you think they're a fair depiction of
8 two questionnaires?

9 A. More or less. This one seems a little
10 light, it's only 213 questions. I thought it was
11 more than that.

12 Q. Well, there might have been some questions
13 that dealt with some crime that isn't related to
14 these charges here, so they might have been removed?

15 A. As people pled, I recall removing some of
16 the questions related to them.

17 Q. I'm going to move for the admission of the
18 two questionnaires.

19 THE COURT: Any objection to that, Mr.
20 Castellano?

21 MR. CASTELLANO: May I have a moment, Your
22 Honor?

23 THE COURT: What are the numbers on them,
24 Mr. Castle?

25 MR. CASTLE: EL 1 and EL 2.

1 MR. CASTELLANO: May I see the exhibits,
2 Your Honor?

3 THE COURT: And these are just blank
4 questionnaires, Mr. Castle?

5 MR. CASTLE: Yes.

6 Q. While you're looking at that, were you
7 asked by the defense if you could provide us copies
8 of the blank questionnaires with your formatting on
9 it?

10 A. Yes, sir.

11 Q. And did you indicate that you had been told
12 you weren't allowed to give us those?

13 A. Something along those lines, yes.

14 Q. Okay.

15 MR. CASTELLANO: May we approach, Your
16 Honor?

17 THE COURT: You may.

18 (The following proceedings were held at the
19 bench.)

20 MR. CASTELLANO: The concern we have is
21 that they took a questionnaire that was filled out,
22 and they've removed information from the
23 questionnaire. So I don't know what that did to the
24 format or to the questions. To say that this is -- I
25 mean, it's very close to what it is. But I don't

1 know how much it's been changed by the removal of
2 information that was in the document.

3 THE COURT: Do you have a blank one that
4 you could substitute for this that they could use
5 this to show the witness, but before it goes back to
6 an exhibit, you provide them with one that's not
7 filled in?

8 MR. CASTELLANO: We may need to make sure
9 that the formatting of the questions are correct, and
10 in order.

11 THE COURT: Will that work for you, Mr.
12 Castle?

13 MR. CASTLE: Yes. We were told by Agent
14 Acee that the U.S. Attorney said he couldn't give us
15 one.

16 THE COURT: Will this work: I'll go ahead
17 and admit these, but they'll be subject to one that
18 y'all run off your computer. If there is an
19 argument, I can take a look at it.

20 MR. CASTELLANO: Okay.

21 (The following proceedings were held in
22 open court.)

23 THE COURT: All right. Any other objection
24 or issue with those two exhibits? Not seeing or
25 hearing any, Defendant's Exhibit EL 1 and EL 2 will

1 be admitted into evidence.

2 (Exhibits EL 1 and EL 2 admitted.)

3 THE COURT: All right. Mr. Castle.

4 BY MR. CASTLE:

5 Q. Agent Acee, I'm going to give you a copy of
6 EL 1 and EL 2. And you said you made some changes
7 between the first version and the second; is that
8 right?

9 A. I believe so, yes.

10 Q. And I want you to go, first of all, to
11 question 67.

12 A. In the 2016 one?

13 Q. Yes -- both of them, actually.

14 A. 67?

15 Q. Well, 68 -- I'm sorry. And in the 2016
16 one.

17 A. In the December 2016 one.

18 Q. If you could look at 68 in the first one
19 and --

20 THE COURT: Why don't you pull that
21 microphone down. It's sticking straight up. Why
22 don't you bend it toward your mouth. There you go.
23 Thank you.

24 MR. CASTLE: As long as no one asks us to
25 sing a Nat King Cole song together, Your Honor, I

1 think we'll be fine.

2 THE COURT: I don't know. Everybody might
3 enjoy it.

4 MR. CASTLE: Not if they heard my voice.

5 Q. In the first version there was a question,
6 it says: "Was Leonard Lujan ever an leader within
7 the SNM? What green lights did he issue?" Do you
8 see that?

9 A. Yes, sir.

10 Q. And in the second version that was removed
11 and was replaced with question: "Where do you think
12 Angel DeLeon is?" Do you see that?

13 A. Yes, sir.

14 Q. Why would the witnesses that were being
15 questioned with the same questionnaire, why did the
16 FBI no longer want to know whether Leonard Lujan ever
17 was a leader in the SNM and whether he had green
18 lights issued?

19 A. I think after he pled is when I removed
20 that question.

21 Q. Okay. But it would have been important to
22 ask, so that the jury knew how to assess Leonard
23 Lujan's testimony, right -- I guess -- never mind,
24 I'll strike that.

25 If you could go to questions 95 through 97

1 on the first questionnaire. Do you see Leonard
2 Lujan's name was removed in the questions in the
3 first questionnaire, when it made its rounds to the
4 second questionnaire?

5 A. Again, without looking at it, probably
6 because once he pled, I -- as guys pled, I removed
7 names.

8 Q. Well, look at specifically question number
9 97, if you can. In both versions you put: "Leonard
10 Lujan was part of the murders of Pancho and Looney,"
11 right?

12 A. Yes, sir.

13 Q. So you didn't remove his names from those?

14 A. No, sir.

15 Q. Go to question 140. There is a question
16 about -- well, Big Jake, Manuel Jacob Armijo, and
17 whether he and Christopher Garcia ordered the murder
18 of Michael Giron. Do you see that?

19 A. Yes, sir.

20 Q. And then the second questionnaire his
21 name's removed, and you're only asking whatever --
22 you're using that questionnaire to talk to witnesses
23 about that same murder. But you're only asking about
24 whether Chris Garcia was involved in that; is that
25 right?

1 A. Yes, sir.

2 Q. Now, if we find -- if you have a different
3 format in those questions, I think we're going to
4 have to look overnight and bring them to the
5 Government, and just make sure they're accurate.

6 A. Sure.

7 Q. Oh, can you look on both questionnaires,
8 when it deals with the two murders, and see if there
9 is anything in there about Michael Jaramillo, whether
10 he was part of the murders?

11 A. I don't believe his name is in either one.

12 Q. How about Lorenzo Mora?

13 A. No.

14 Q. How about Ray Molina?

15 A. No.

16 Q. We've heard a lot about the symbol that the
17 SNM uses, right? Did the FBI operation also have its
18 own symbol?

19 A. Yes.

20 Q. And that was a Zia with a skull in the
21 middle of it, right?

22 A. I think that one is Corrections. Mine is
23 on the poster actually.

24 Q. Okay. That's just a Zia --

25 A. A Spartan helmet with the New Mexico flag

1 is the symbol I used.

2 MR. SINDEL: Say that again. A Spartan
3 helmet? I didn't hear what you said.

4 THE COURT: A Spartan helmet with a New
5 Mexico flag.

6 MR. SINDEL: Okay.

7 Q. Actually, that second questionnaire is
8 dated February 2017; is that right?

9 A. Yes, sir.

10 Q. Do you recall that Mr. Lujan actually
11 didn't plead guilty until after that date?

12 A. I'm not sure.

13 Q. So I think your earlier testimony was that
14 he pled guilty on March 13, 2017. So was his name
15 removed for some other reason, then?

16 A. Well, I guess I would say that sometimes I
17 know they're going to plead, but we can't get into
18 court for a few weeks. So I may have misspoke. I'm
19 sorry.

20 Q. Well, somebody like Mr. Lujan, there was
21 always a worry that he was going to --

22 A. Well, I don't want to comment on the
23 Court's schedule. They're pretty busy.

24 Q. Well, have you seen the symbol of Operation
25 Atonement as a Zia with a skull on it?

1 A. Yes, sir.

2 Q. And is that because the FBI wanted to kill
3 off the SNM?

4 A. No, sir. That's actually painted up at the
5 Penitentiary of New Mexico on one of the walls.

6 Q. Now, I think when you first testified in
7 the trial, you indicated that it was important to try
8 to corroborate or vet the information that someone
9 was trying to give you, who was an informant?

10 A. Yes, sir.

11 Q. And I want to kind of go through that a
12 little bit.

13 Oh, I forgot -- Javier Alonso, we were
14 talking about at trial he had said that Mr. Garcia
15 was SNM. During his interview with you, didn't he,
16 in fact, say that there was a hit out on Mr. Billy
17 Garcia because he was no longer with the SNM? Would
18 you like to look at the discovery?

19 A. Yes.

20 Q. That there was a hit out on him because
21 Billy Garcia was done with the SNM; is that correct?

22 A. Yes, sir.

23 Q. Now, in your work on the case, did you also
24 have in your cell, for people working on your team,
25 people keep a close eye on the activities of people

1 you had arrested while they were being held prior to
2 trial, or even after they pled guilty, and things of
3 that nature?

4 A. In some cases. It depended on the
5 facility.

6 Q. There was searches done of people's cells,
7 right, at times?

8 A. Yes, I think only once. Could you
9 distinguish who you're talking about?

10 Q. Well, I mean, there were different
11 situations. But at least with all these defendants,
12 their cells were searched right before the trial. Do
13 you recall that?

14 A. Yes, sir. I don't believe I had anything
15 to do with that, though.

16 Q. Okay. But, in any event, nothing came of
17 that, right, that you're aware of?

18 A. Nothing jumps out.

19 Q. But you'd also -- there would also be
20 information that people would bring back as to
21 whether there were threats coming out of the
22 facility, letters that were threatening, phone calls
23 that were troublesome, things like that?

24 A. Early on in the case there was a lot more
25 of that, and it seemed to kind of die off.

1 Q. And these defendants, and more specifically
2 Billy Garcia, his phone -- all of his phone calls
3 were recorded and reviewed by the FBI; is that right?

4 A. Yes, sir.

5 Q. And all of his mail was reviewed and read
6 to see if it had anything threatening of that nature?

7 A. I'm not sure about that, sir. Once they
8 were represented, the only thing that my team looks
9 at is the phone calls that are recorded.

10 Q. Oh, you're not aware that mail that wasn't
11 to lawyers, but mail to other people, were copied at
12 the facilities and provided?

13 A. With one exception, no. The only exception
14 was when I wrote the search warrant. I'm not aware
15 of any.

16 Q. Now, with regards to some testimony about
17 Mr. Garcia, at one point in his life, was heavy into
18 heroin; I think you probably heard some testimony of
19 that. By the time of his -- your first approach, and
20 his arrest, you had no information that he was using
21 it anymore; is that right?

22 A. No, sir, I did not have any information.

23 Q. There was some times when you were able, in
24 your investigation, to get one of the SNM cooperators
25 who had turned -- this is before the December

1 arrests, okay -- to call up other SNM members and get
2 them to say -- or at least attempt to get them to say
3 incriminating things; is that right?

4 A. Yes.

5 Q. Did you use that technique, have anybody
6 call up Billy Garcia and try to get him to talk about
7 SNM business?

8 A. No, sir.

9 Q. And that's in your investigation. I've had
10 an opportunity to read the reports. No one could
11 give you information that Billy Garcia was currently
12 active in the SNM between when you started the
13 investigation in March and when you had arrested him?
14 They didn't say: I know Billy, he's still doing
15 this; he's still with the S; he's still doing S
16 business on the outside, things of that nature?

17 A. No. And I can definitely quickly say I did
18 not get information about him having guns or selling
19 drugs or anything like that.

20 Q. Because if you had somebody that had that
21 information, you'd probably get them on the phone
22 with Mr. Garcia, or things of that nature, right?

23 A. Things of that nature, yes.

24 Q. Okay. Now, you touched on this a little
25 bit that Mr. Archuleta had said he was done with the

1 SNM before he got arrested. Do you recall that?

2 A. Did I say that?

3 Q. Well, I think you said you disagreed that
4 he was still a leader.

5 A. I disagreed.

6 Q. Yeah. And you had people make phone calls
7 with him, right?

8 A. Yes.

9 Q. I think -- was it Eric Duran and also Sammy
10 Griego?

11 A. Yes, and Tomas Clark.

12 Q. Okay. And during those calls, do you
13 recall Mr. Archuleta and you talking about being
14 requested to come in and do a hit in New Mexico with
15 a Billy Baca, or on a Billy Baca? Does that ring a
16 bell at all?

17 A. Vaguely.

18 Q. And do you recall him indicating that, "I'm
19 no John Gotti, but I keep it real with my brothers,
20 that's for sure"?

21 MR. CASTELLANO: Objection, calls for
22 hearsay.

23 MR. CASTLE: I think it impeaches Mr.
24 Archuleta's testimony that he wasn't part of the S.

25 THE COURT: Well, why don't y'all approach

1 so I understand what we're impeaching here.

2 (The following proceedings were held at the
3 bench.)

4 MR. CASTELLANO: And I don't think that
5 statement impeaches anything that Gerald Archuleta
6 said.

7 MR. CASTLE: Gerald Archuleta specifically
8 said he moved to Tennessee with his son because he
9 was leaving the S, and that's why he went to
10 Tennessee.

11 MR. CASTELLANO: But what does that
12 statement tell us about the SNM?

13 THE COURT: What is the statement? Let me
14 look and see the statement you're trying to --

15 MR. CASTLE: "I'm no John Gotti, but I keep
16 it real with my brothers, that's for sure." And I
17 was going to ask him a followup question of whether
18 the SNM call each other brothers.

19 MR. CASTELLANO: But Gerald Archuleta
20 admitted that he kept in touch with some people back
21 in New Mexico, including Jake Armijo and a few
22 others, I think, including Garduno. So that doesn't
23 impeach that statement or what he said.

24 THE COURT: I guess I'm not seeing
25 impeachment either.

1 MR. CASTLE: Judge, there are a series of
2 these statements, okay? One was, "I'm not never
3 going against Pup," who is the current leader.

4 THE COURT: Who is saying this?

5 MR. CASTLE: These are all statements by
6 Archuleta.

7 THE COURT: Now, are we talking about made
8 in court?

9 MR. CASTLE: No. In court he said he
10 wasn't doing any work with the SNM, he was out since
11 he moved to Tennessee. And quote, "The only way
12 we'll getting back together is if we take 'em out."

13 THE COURT: I'm confused. Are these
14 statements that you're impeaching or statements that
15 you want Mr. Acee to testify about?

16 MR. CASTLE: These are the statements that
17 I want Agent Acee to testify about.

18 THE COURT: And the statement that you're
19 impeaching is that he moved to Tennessee to --

20 MR. CASTLE: To get out of the SNM.

21 THE COURT: Okay. Now, start over and tell
22 me what you're wanting him to say.

23 MR. CASTLE: A series of statements, "I'm
24 not never going against Pup," meaning Mr. Baca.

25 "The only way we'll get back together is if

1 we take 'em out."

2 THE COURT: Let me think about these one at
3 a time. The one, "I'm not never going against Pup,"
4 you're saying because he uses the phrase "I'm not
5 never," that covers that period of time?

6 MR. CASTLE: I'm not. "Never going against
7 Pup," that's future -- poorly worded future tense.

8 THE COURT: Okay. Well, given the breadth
9 of that statement, I'd be inclined to again instruct
10 the jury to consider these only to determine Mr.
11 Archuleta's statements when he testified.

12 What was the next one?

13 MR. CASTLE: The next one, "The only way
14 we'll get back together is if we take 'em out." And
15 that's in reference to his discussions with Mr. Duran
16 about the SNM. And it's really the end of a
17 discussion where he's talking about the SNM has split
18 up, has been kind of divided. And he's saying "The
19 only way we'll get back together is if we take 'em
20 out," and he's referencing the Surenos.

21 THE COURT: Who?

22 MR. CASTLE: He's referencing the Surenos.

23 THE COURT: When he says "him" --

24 MR. CASTLE: "Take 'em out."

25 THE COURT: So you're saying these

1 statements show that he was continuing to be an SNM
2 person?

3 MR. CASTLE: Yes.

4 THE COURT: What's the next one about?

5 MR. CASTLE: "I'm no John Gotti, but I keep
6 it real with my brothers, that's for sure."

7 THE COURT: Okay.

8 MR. CASTLE: He's talking to Sammy Griego
9 about the Superman truck. He says that he wears
10 Superman shirts, and the people in Tennessee don't
11 even know what it's about over here. That's kind
12 of --

13 THE COURT: Read that one again to me.

14 MR. CASTLE: They're talking about the
15 Superman symbol on the truck. And he says he wears a
16 Superman shirt, and they don't even know what it's
17 about over here.

18 THE COURT: Who do you think the "they" is?

19 MR. CASTLE: The --

20 THE COURT: People in Tennessee?

21 MR. CASTLE: Yeah, the people in Tennessee.
22 Because he talks about the police there not knowing
23 who he is. It's actually in the context of the
24 police have been told by New Mexico who he is, but
25 they just see a regular guy, and they don't know what

1 he is.

2 THE COURT: Okay.

3 MR. CASTLE: And then might as well --
4 while we're up here, there are some other statements
5 that I was going to bring out. He said he was going
6 to stay in Tennessee because he wanted to be out of
7 the S. On his phone call it says, "I'm still out
8 here in Tennessee."

9 THE COURT: Now, all the statements you
10 just gave me were ones that he made to Mr. Acee?

11 MR. CASTLE: Over the phone calls that Mr.
12 Acee was monitoring and setting up with Sammy Griego,
13 as part of a recorded call.

14 THE COURT: So he's listening to recorded
15 calls now?

16 MR. CASTLE: I think he was monitoring
17 those calls at the time.

18 THE COURT: Mr. Acee was?

19 MR. CASTLE: Yes. It doesn't really tell
20 us. They don't give us that information.

21 MR. CASTELLANO: He wouldn't have been
22 speaking directly to Agent Acee because those were
23 undercover operations, so those would be statements
24 by Gerald Archuleta to third parties who were
25 cooperating with the United States.

1 MR. CASTLE: Were they not monitoring them?

2 MR. CASTELLANO: I don't know if they were
3 monitoring real-time or afterwards. That, I'm not
4 sure about each particular call.

5 MR. CASTLE: I can ask.

6 THE COURT: The one that you gave me, the
7 list, before we get to the other statements, the ones
8 you gave me, are those ones that were made directly
9 to Mr. Acee?

10 MR. CASTLE: No, they would have been made
11 either to Sammy Griego or Eric Duran, with the FBI
12 monitoring it, because they're all set up to do it.

13 THE COURT: They'd be listening to the FBI
14 tapes.

15 Okay. Now, the statements you're about to
16 give me are going to be -- where do they come from?

17 MR. CASTLE: This comes from the same
18 calls.

19 THE COURT: Same calls.

20 MR. CASTLE: The next one is, "I'm still
21 out here in Tennessee. It's almost that time to go
22 back, you know what I mean," meaning going back to
23 New Mexico. There are several statements he makes
24 where he says he's going to go back to New Mexico.
25 That impeaches his statement that he was never

1 intending to come back to New Mexico.

2 And then finally -- I can't read my
3 handwriting, Judge -- so --

4 THE COURT: You took a shot at me. My
5 feelings were hurt up here.

6 MR. CASTLE: One more quote, Your Honor.
7 He's talking about Eric Duran and he says, quote,
8 "I'm down for whatever, just what's up, you know,
9 like, you know, whatever."

10 THE COURT: And this is a monitored call?

11 MR. CASTLE: Yeah, he's down for whatever.
12 I think --

13 THE COURT: Well, it sounds to me like
14 these are ones that should come in with a limiting
15 instruction.

16 MR. CASTELLANO: Right. The problem is
17 it's very abstract, so Agent Acee is at a
18 disadvantage not knowing the surrounding
19 conversation. I agree with the Court. I see where
20 you're coming from. But they're isolated statements.

21 THE COURT: They are. But let me go ahead
22 and give an instruction, and then you're just going
23 to get these out.

24 MR. CASTLE: Yes.

25 (The following proceedings were held in

1 open court.)

2 THE COURT: All right. Mr. Acee is going
3 to testify to some statements that Mr. Archuleta made
4 in some monitored phone calls. The FBI monitored the
5 calls. And he's going to testify to us about some
6 statements that Mr. Archuleta made. Again, you can
7 only consider these, not for the truth of the matters
8 that are going to be stated by Mr. Archuleta through
9 Mr. Acee's testimony, but you can only consider these
10 for determining whether Mr. Archuleta, when he was
11 testifying before you, was telling you the truth. So
12 you can only use these to determine Mr. Archuleta's
13 credibility.

14 All right. Mr. Castle.

15 MR. CASTLE: Yes, thank you, Your Honor.

16 BY MR. CASTLE:

17 Q. Agent Acee, was there a leader of the SNM
18 by the name of Pup, or nickname by the name of Pup?

19 A. Yes.

20 Q. And, you know, the jury may remember
21 testimony, but I just want to make sure that we
22 clarify. He was one of the people that were trying
23 to kill Mr. Marcantel and Mr. Santistevan, at least
24 was setting it up?

25 A. Yes.

1 Q. So going to those calls, these calls that
2 were made when Mr. Archuleta using Eric Duran, the
3 three people you were talking about, those calls were
4 set up with monitoring and recording; is that right?

5 A. Yes.

6 Q. And the FBI would take care of that aspect,
7 you didn't leave that up to those people, right?

8 A. There were -- FBI equipment captured the
9 conversations.

10 Q. And in those conversations do you recall
11 Mr. Archuleta -- I'm going to go through a series of
12 them -- the first one saying, "I'm not never going
13 against Pup"?

14 A. That sounds familiar.

15 Q. And in reference to the fact that the SNM
16 was kind of fractionalized, do you recall Mr.
17 Archuleta saying, "The only way we'll get back
18 together is if we take 'em out"?

19 A. I'm not sure about that one.

20 Q. I'll see if we can grab that for you. I
21 think the one that we were talking about earlier, Mr.
22 Archuleta saying, "I'm no John Gotti, but I keep it
23 real with my brothers, that's for sure."

24 A. That sounds familiar.

25 Q. And do the members of the SNM often call

1 each other "brothers"?

2 A. Yes.

3 Q. We talked with Mr. Griego about the fact
4 that he has this truck with the Superman symbol, the
5 S on it?

6 A. Yes.

7 Q. And do you remember him talking to Mr.
8 Archuleta about that, and Mr. Archuleta responding
9 that he wears Superman shirts, and that "they,"
10 meaning the people in Tennessee, "don't even know
11 what it's about over here"?

12 A. I remember that.

13 Q. Do you recall him talking about coming back
14 to Albuquerque to perhaps participate in a hit of
15 someone?

16 A. I remember trying to pull him back here. I
17 don't remember exactly how that conversation went.

18 Q. Do you recall him saying, "I'm still out
19 here in Tennessee. It's almost that time to go back
20 home, you know what I mean?"

21 A. That sounds familiar.

22 Q. During a conversation with Mr. Duran, he --
23 do you recall him talking about the fact that he'd
24 sent some letters out -- Mr. Archuleta had sent some
25 letters out -- one to Eric Duran, in fact?

1 A. No, sir.

2 Q. Okay.

3 THE COURT: Mr. Castle, do you want take
4 all these statements tomorrow?

5 MR. CASTLE: Yes. That would be great.

6

7 EXCERPTS CONCLUDED

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
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UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
Official Court Reporter for the State of New Mexico,
do hereby certify that the foregoing pages constitute
a true transcript of proceedings had before the said
Court, held in the District of New Mexico, in the
matter therein stated.

In testimony whereof, I have hereunto set my
hand on May 20, 2018.



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